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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/549,670	07/03/2006	Stephen Moreton	0068905-000267	3701
23464 7590 03/11/2010 BUCHANAN INGERSOLL & ROONEY PC P.O. BOX 1404 ALEXANDRIA, VA 22313-1404				
EXAMINER KILPATRICK, BRYAN T				
ART UNIT 1797		PAPER NUMBER		
NOTIFICATION DATE 03/11/2010		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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**Advisory Action
Before the Filing of an Appeal Brief**

Application No. 10/549,670	Applicant(s) MORETON, STEPHEN
Examiner BRYAN T. KILPATRICK	Art Unit 1797

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 01 March 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.
NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1 and 4-35.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Samuel P Siefke/
Primary Examiner, Art Unit 1797

Continuation of 11, does NOT place the application in condition for allowance because: Applicant states in Claim Rejections section, on p. 8 of the After Final Remarks filed on 01 March 2010 that "Nothing in the '772 publication teaches a combination of Fe and Br salts to provide an indicator that works below 20% relative humidity with a copper level below 0.002% by weight." 35 U.S.C. 102 (b) states that, "A person shall be entitled to a patent unless - (b) the invention was patented or described in a printed publication in this or a foreign country ... more than one year prior to the date of the application for patent in the United States, ..." The '772 publication discloses a desiccant that is capable of reducing relative humidity below about 30% (p. 3), the desiccant is comprised of a silica-based material impregnated with copper and bromide wherein the source of copper is present up to 0.5% and the bromide is present such that there is a 5:1 ratio of bromide to copper (p.2), and that the desiccant can employ the use of dyes or other coloring materials (p. 3) that can comprise iron salts (p. 3) and are in the amount of 0.0001 to 0.1% - 0.01 to 2.0% when transition metal salts are used (p. 4).

Applicant states on p. 9 of the After Final Remarks in section A that, "The successive ranges recites in the '772 publication only increases the amount of copper, they do not decrease it." and "the '772 publication teaches the opposite of the claimed invention." In light of 35 U.S.C. 102 (b) and since the '772 publication discloses "up to 0.5%" for copper, the '772 publication meets the limitations of the instant claims.

Applicant states on p. 10 of the After Final Remarks in section B that, "The claims of the instant application require a color change below 20% relative humidity. The '772 publication, on the other hand, limits color change to an equilibrium relative humidity between 20 to 30 percent." As previously stated, in light of 35 U.S.C. 102 (b) and since the '772 publication discloses a desiccant that is capable of reducing relative humidity below about 30%, the '772 publication meets the limitations of the instant claims.

Applicant states on p. 11 of the After Final Remarks in section C that, "One of skill in the art would not attempt to modify a copper-based system to arrive at an iron-based system." The claims of the '772 publication recite an indicating desiccant having an amount of copper that is smaller than the amount of bromide in claims 1 and 9. The '772 publication further recites the use of a dye or colored material in claim 9, and that the amount of the dye can be more than the amount of copper in the desiccant of the '772 publication in claim 12, i.e. the dye is present in amount in the range 0.0001 to 0.1%. In addition, as previously disclosed, the dyes or other coloring materials can comprise iron salts (p. 3).